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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a professional. The petitioner is a retail sporting goods company. It seeks to employ the beneficiary as a senior systems analyst. As required by statute, the petition was accompanied by certification from the Department of Labor (DOL). The director denied the petition because he determined that the petitioner failed to demonstrate that the beneficiary had the required educational credentials as stated on the approved labor certification. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, the petitioner's counsel asserts that the beneficiary has the necessary credentials to meet the qualifications set forth in the approved labor certification.

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is November 7, 2001.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification Form ETA-750A, items 14 and 15 set forth the minimum education, training, and experience that an applicant must have for the position of a systems analyst. In the instant case, item 14 shows the required number of years and type of educational background and experience an applicant for the position must have. It states the following:

- | | | |
|-----|---------------------------|-----------------------------------|
| 14. | Education | |
| | College | X |
| | College Degree Required | Bachelor's |
| | Major Field of Study | Computer Science or Related field |
| | Experience | |
| | Job Offered (yrs.) | 2 |
| | Related Occupation (yrs.) | 2 Software Engineer |

15. Other Special Requirements

Experience and skills must include development of processes on midrange systems. Must be proficient in use of Control Language and Integrated Language Environment Tools. Must possess Retail Applications Expertise and be able to use Report Program Generator.

As proof of the beneficiary's foreign equivalent bachelor's degree, the petitioner submits copies of the beneficiary's diplomas, transcripts and a copy of his diploma from Osmania University, India. It indicates that he received a Bachelor of Science (Computer Science and Engineering) degree in 1996, following a three-year course of study. The record also contains a copy of a 1997 certificate from the Frontier Institute of Information Technology, India, reflecting that it was awarded as a "post-graduate diploma" in computer applications following a twelve-month course of study.

A December 1997 evaluation from Foreign Credential Evaluations, Inc. was also submitted in support of the petition. This evaluation determines that the beneficiary's three-year Bachelor of Science degree equates to the equivalent of "a three-year program of study transferable to a regionally accredited university in the United States." It concludes that the combination of the beneficiary's Bachelor of Science degree and the Frontier Institute of Information Technology certificate represent the U.S. equivalent of a Bachelor of Science degree "with an additional concentration in Computer Science."

The director denied the petition, finding that the petitioner had failed to demonstrate that the beneficiary possessed a foreign bachelor's degree equivalent to a United States baccalaureate.

On appeal, counsel asserts that the evaluation submitted by Foreign Credential Evaluations, Inc. establishes that the beneficiary possesses the requisite baccalaureate degree as required by the terms of the labor certification. Counsel also submits copies of two letters dated January 7, 2003 and July 23, 2003, respectively, from [REDACTED] of the INS Office of Adjudications to counsel in other cases, expressing his opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. 204.5(k)(2). Within the July 2003 letter [REDACTED] states that he believes that the combination of a post-graduate diploma and a three-year baccalaureate degree may be considered to be the equivalent of a U.S. bachelor's degree.

At the outset, it is noted that private discussions and correspondence solicited to obtain advice from CIS are not binding on the AAO or other CIS adjudicators and do not have the force of law. *Matter of Izummi*, 22 I&N 169, 196-197 (Comm. 1968); see also, Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S. Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).

It is noted that *Matter of Sea Inc.*, 19 I&N 817 (Comm. 1988), provides the following:

[CIS] uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) also provides in pertinent part:

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is member of the professions, the petitioner must submit evidence showing that the

minimum of a baccalaureate degree is required for an entry into the occupation.

We find that "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration or study" is applicable to what constitutes evidence of a degree. Because neither the Act nor the regulations indicate that a bachelor's degree must be a United States bachelor's degree, CIS will recognize a foreign equivalent bachelor's degree to a United States baccalaureate.

In evaluating a beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. The AAO cannot conclude that the terms of the labor certification in this case describe any foreign equivalent degree less than a bachelor's degree. The college degree required by item 14 of this labor certification does not indicate that anything less than a full U.S. bachelor's degree or a foreign equivalent baccalaureate degree is acceptable to fulfill the position. It explicitly states that the proffered position requires a bachelor's degree, not a combination of experience or degrees, which could be considered the foreign equivalent of a bachelor's degree. The only clear alternatives stated in this labor certification relate to the field of study and to the work experience as set forth in item 14. CIS may not ignore a term, nor impose additional requirements in reviewing a labor certification. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983).

Moreover, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of degrees, diplomas or employment experience. Additionally, although 8 C.F.R. § 204.5(k)(2), as referenced by counsel and in [REDACTED] correspondence, permits a certain combination of progressive work experience and a bachelor's degree to be considered the equivalent of an advanced degree, there is no comparable provision to substitute a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. We do not find the determination of the credentials evaluation probative in this matter. It is further noted that a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Comm. 1977). In that case, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Matter of Shah*, at 245. Based on similar reasoning, the evidence fails to establish that this beneficiary's baccalaureate from Osmania University represents a four-year baccalaureate degree.

It is also noted that although the preamble to the publication of the final rule at 8 C.F.R. § 204.5 in 1991 specifically dismissed the option of equating "experience alone" to the required bachelor's degree for a second preference classification as an advanced degree professional or as a professional under the third classification, similar reasoning would also prohibit the acceptance of an equivalence in the form of multiple lesser degrees, professional training, or any other level of education deemed to be less than a "foreign equivalent degree" to a United States baccalaureate degree. *See* 56 Fed. Reg. 60897 (Nov. 29, 1991).

Based on a review of the requirements of the approved labor certification and the evidence submitted, the AAO cannot conclude that the petitioner has established that the beneficiary possesses either a United States bachelor's degree or a foreign equivalent degree as required by the terms of the labor certification. In absence of evidence that the beneficiary has satisfied the terms of the labor certification, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.